IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 1635 of 1996

For Approval and Signature:

Hon'ble THE CHIEF JUSTICE G.D.KAMAT

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BHARWAD GOHAR KANA

Versus

AVNISH GHANSHYAMBHAI KOTAK

Appearance:

MR NILESH A. PANDYA, with MR HARESH H PATEL

for Petitioners

MR SURESH M SHAH for the Respondent.

CORAM : THE CHIEF JUSTICE G.D.KAMAT

Date of decision: 28/11/96

ORAL JUDGEMENT

This revision application is directed against an order dated 23rd September, 1996 made by the appellate court, rejecting Civil Miscellaneous Application No.155 of 1995, which prayed for condonation of delay in filing appeal against a judgment and decree dated 31st March, 1995 made in Civil Suit No.326 of 1981 by the IVth Joint civil Judge (Senior Division), Rajkot. Condonation of delay is sought, which is for a period of 28 days, according to the petitioners, and which is, however, disputed by the respondent (Original Plaintiff) and which, according to them, is 60 to 61 days. Averments are made in the application, seeking to get the delay condoned, by saying that the petitioners are illiterate persons belonging to Bharwad community, and secondly that the Advocate they had engaged for institution of the appeal was out of station during the period from 11th of July, 1995 to 20th July, 1995 and that the Advocate was sick from 1st of April, 1995 to 15th of April, 1995.

The condonation application was opposed on behalf

of the respondent (original plaintiff). The learned appellate Judge, though rendered a finding that the applicants are illiterate, however, held that the delay occasioned is due to gross negligence and, therefore, the same cannot be condoned. It was also observed that whatever facts pleaded for sufficient cause are also not proved and, therefore, no liberal approach can be solicited by the applicants.

Since there is a dispute about the period, which is sought to be got condoned, it has become necessary to find out the same. Admittedly, the judgment and decree is dated 31st March, 1995 and the certified copy of the same was applied for on 15th of April, 1995. The petitioners obtained the certified copy on 20th July, 1995 and which said in clear terms that the same was ready on 11th of July, 1995. However, it is common ground there is no practice with the court to give a fixed date for receipt of the certified copy. One has, therefore, to go on the basis that the certified copy became ready for delivery or at least, the petitioners had the knowledge about the same on 20th July, 1995. The appeal was instituted on 25th September, 1995, the result being after excluding the period, as mentioned under the provisions of the Limitation Act, the appeal ought to have been filed on 5th of August, 1995. Since the appeal was instituted on 25th September, 1995, it is clear that the same was barred by 51 days.

What is urged before the trial court is sought to be urged before this Court in the matter of condonation of delay. However, it has been pointed out by the learned counsel for the petitioners that a clear finding has been rendered by the trial court that the appellants-petitioners are illiterate persons, but then the counsel makes a grievance that the learned Judge was in error in recording that the case suffers from gross delay. He urged that even if we go by the delay of 51 days, this could not be styled as a case of gross delay so as to throw out the appellants from hearing them on merits of the appeal.

This Revision Application is vehemently opposed by Shri S.M. Shah, learned counsel for the respondent-opponent. In the first place, he urged that once the appellate court, being the original court, has refused to condone the delay on rendering facts, it is not possible for this Court in its revisional jurisdiction to interfere with the impugned order. He candidly conceded that it may be open, in a revisional jurisdiction, to interfere with the order only if a

revisional court comes to a conclusion based on findings, which are perverse. He then urged that once the application for condonation of delay was rejected, the decree has become final, with the result there is a creation of the vested right in the respondent-original plaintiff and, therefore, this Court cannot lightly interfere with such a vested right. In any event, Mr.Shah insists that, on facts stated in the application for condonation of delay, in the first place, no sufficient cause has been made out nor the appellants-petitioners deserve the condonation of delay. In support of various submissions, Mr.Shah relies upon the decision of the Supreme Court in Lala Bal Mukand (dead) by L.Rs. v. Lajwanti and others, AIR 1975 SC 1089. To get the delay condoned, all that is necessary is to satisfy the Court that there is sufficient cause. The expression `sufficient cause' appears in large number of statutes, including the relevant provisions of the Limitation Act, 1963. The Legislature, in its wisdom, has not defined the expression `sufficient cause' so that the courts are left with discretion depending upon facts of each case. If the expression `sufficient cause' had been defined, it would have put fetters on the Court, with the result the litigants would be at the peril of losing good cases of merit. In so far as the present case is concerned, the learned appellate Judge, though rightly concluded that the petitioners are illiterate persons, did not go to appreciate facts and in the absence thereof, rendered a finding that the petitioners' case suffers from gross delay. In fact, it was clearly incumbent upon the appellate court to have, on appreciation of facts, shown as to how the case set out suffered from gross delay. As pointed out earlier, the fact remains that after making of the judgment and decree on 31st of March, 1995, the applicants promptly applied for a certified copy on 15th of April, 1995 and once they got the certified copy on 20th July, 1995, they have set out that there was some strike and there was some inability on the part of the lawyer. In any case, the delay required to be condoned is of 51 days. In the facts and circumstances, therefore, such a delay cannot be held to be so gross as to deny them the condonation. Besides, the matters are required to be fought on merits and not defeated on technicalities. This perspective has also to be borne in mind in dealing with applications for condonation of delay, more particularly when the Court can compensate the other side by costs. In this view of the matter, in my view, it is not necessary to dilate any further. The revision application deserves to be allowed, subject, however, to payment of costs. The impugned order dated 23rd September, 1996 made in

Miscellaneous Civil Application No.155 of 1995 made by the IVth Joint District Judge at Rajkot is quashed and set aside. Miscellaneous Civil Application No.155 of 1995 is allowed, subject to the payment of costs of Rs.500/-.

In my view, a further order is necessary to be made. I am told that the decree also awards mesne profits in favour of the respondent-original plaintiff. On calculation, I am told that the amount payable under the decree by way of mesne profits comes to Rs.5,900/-. Appellants-Petitioners have already preferred an appeal, which is now required to be registered as such and in addition, the appellants have taken out an application under Exhibit 5, viz., for stay of the execution. In fitness of things, therefore, the appellants are also directed to deposit a sum of Rs.6,000/-, within eight weeks from today. In view of Miscellaneous Civil Application No.155 of 1995 being granted by this Court in this order, the appeal is required to be heard. The trial court will make an attempt to dispose of the appeal on or before 31st May, 1997 and in any case, he shall dispose of Exhibit 5 application on or before 10th of January, 1997.

Rule is made absolute, as indicated.

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(apj)